

## Central Intelligence Agency

## § 1900.43

and Privacy Coordinator; the Chief, Historical Review Group; the Chair, Publications Review Board; the Chief, Records Declassification Program; and representatives from the Office of General Counsel, the Office of Congressional Affairs, and the Public Affairs Staff.

(2) *Authorities and activities.* The Panel shall meet on a regular schedule and may take action when a simple majority of the total membership is present. The Panel shall advise and assist the HRPB on all information release issues, monitor the adequacy and timeliness of Agency releases, set component search and review priorities, review adequacy of resources available to and planning for all Agency release programs, and perform such other functions as deemed necessary by the Board. The Information and Privacy Coordinator also serves as Executive Secretary of the Panel. The Chair may request interested parties to participate when special equities or expertise are involved. The Panel, functioning as a committee of the whole or through individual members, will make final Agency decisions from appeals of initial adverse decisions under the Freedom of Information Act and such other information release decisions made under 32 CFR parts 1901, 1907, and 1908. Issues shall be decided by a majority of members present; in all cases of a divided vote, any member of the ARP then present may refer such matter to the HRPB by written memorandum to the Executive Secretary of the HRPB. Matters decided by the Panel or Board will be deemed a final decision by the Agency.

### **§ 1900.42 Right of appeal and appeal procedures.**

(a) *Right of Appeal.* A right of administrative appeal exists whenever access to any requested record or any portion thereof is denied, no records are located in response to a request, or a request for a fee waiver is denied. The Agency will apprise all requesters in writing of their right to appeal such decisions to the CIA Agency Release Panel through the Coordinator.

(b) *Requirements as to time and form.* Appeals of decisions must be received by the Coordinator within forty-five

(45) days of the date of the Agency's initial decision. The Agency may, for good cause and as a matter of administrative discretion, permit an additional thirty (30) days for the submission of an appeal. All appeals shall be in writing and addressed as specified in 32 CFR 1900.03. All appeals must identify the documents or portions of documents at issue with specificity and may present such information, data, and argument in support as the requester may desire.

(c) *Exceptions.* No appeal shall be accepted if the requester has outstanding fees for information services at this or another federal agency. In addition, no appeal shall be accepted if the information in question has been the subject of a review within the previous two (2) years or is the subject of pending litigation in the federal courts.

(d) *Receipt, recording, and tasking.* The Agency shall promptly record each request received under this part, acknowledge receipt to the requester in writing, and thereafter effect the necessary taskings to the Deputy Director(s) in charge of the directorate(s) which originated or has an interest in the record(s) subject to the appeal. As used herein, the term Deputy Director includes an equivalent senior official in the DCI-area as well as a designee known as the Information Review Officer for a directorate or area.

(e) *Time for response.* The Agency shall attempt to complete action on an appeal within twenty (20) days of the date of receipt. The current volume of requests, however, often requires that the Agency request additional time from the requester pursuant to 32 CFR 1900.33. In such event, the Agency will inform the requester of the right to judicial review.

### **§ 1900.43 Determination(s) by Deputy Director(s).**

Each Deputy Director in charge of a directorate which originated or has an interest in any of the records subject to the appeal, or designee, is a required party to any appeal; other interested parties may become involved through the request of the Coordinator when it is determined that some or all of the information is also within their official cognizance. These parties shall respond

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in writing to the Coordinator with a finding as to the exempt status of the information. This response shall be provided expeditiously on a “first-in, first-out” basis taking into account the business requirements of the parties and consistent with the information rights of members of the general public under the various information review and release laws.

#### § 1900.44 Action by appeals authority.

(a) *Preparation of docket.* The Coordinator, acting in the capacity of Executive Secretary of the Agency Release Panel, shall place administrative appeals of FOIA requests ready for adjudication on the agenda at the next occurring meeting of that Panel. The Executive Secretary shall provide a summation memorandum for consideration of the members; the complete record of the request consisting of the request, the document(s) (sanitized and full text) at issue, and the findings of the concerned Deputy Director(s) or designee(s).

(b) *Decision by the Agency Release Panel.* The Agency Release Panel shall meet and decide requests sitting as a committee of the whole. Decisions are by majority vote of those present at a meeting and shall be based on the written record and their deliberations; no personal appearances shall be permitted without the express permission of the Panel.

(c) *Decision by the Historical Records Policy Board.* In any cases of divided vote by the ARP, any member of that body is authorized to refer the request to the CIA Historical Records Policy Board which acts as the senior corporate board for the Agency. The record compiled (the request, the memoranda filed by the originator and interested parties, and the previous decision(s)) as well as any memorandum of law or policy the referent desires to be considered, shall be certified by the Executive Secretary of the Agency Release Panel and shall constitute the official record of the proceedings and must be included in any subsequent filings.

#### 32 CFR Ch. XIX (7–1–99 Edition)

#### § 1900.45 Notification of decision and right of judicial review.

The Executive Secretary of the Agency Release Panel shall promptly prepare and communicate the decision of the Panel or Board to the requester. With respect to any decision to deny information, that correspondence shall state the reasons for the decision, identify the officer responsible, and include a notice of a right to judicial review.

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